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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2018

CORAM :

**THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN**

WP (MD) No.4066 of 2018

and

WMP (MD) No.4225 of 2018

B.Rajkumar

... Petitioner

Vs.

1.The Managing Director,  
Tamil Nadu Forest Plantation  
Corporation Limited,  
Karur Road,  
Mallachipuram,  
Kambarasampettai,  
Tiruchirapalli - 622 101.

2.The Joint Director,  
Tamil Nadu Forest Plantation  
Corporation Limited,  
Karur Road,  
Mallachipuram,  
Kambarasampettai,  
Tiruchirapalli - 622 101.

3.The Regional Manager,  
Tamil Nadu Forest Plantation  
Corporation Limited,  
Indira Nagar,  
Machuvadi,  
Pudukottai & District - 622 004.

4.Periyasamy

5.Pandiyan

... Respondents

Petition filed under Article 226 Constitution of India to issue a Writ of Mandamus directing the first respondent to conduct fresh auction for collecting and removing cashew nuts and fruits in Komapuram Forest Units at Gandarvakottai Region for the year 2017-2018.

For Petitioner

: Mr.RMS.Sethuraman

For R1 to R3

: Mr.Aayiram K.Selvakumar

Additional Government Pleader

For R4

: No appearance

For R5

: Mr.M.Karunanithi

ORDER

This writ petition has been filed seeking direction to the first respondent to conduct fresh auction for collecting and removing cashew nuts and fruits in Komapuram Forest Units at Gandarvakottai Region for the year 2017-2018.

2. According to the petitioner, a tender was called for by the first respondent for collection of cashew nuts and fruits in Komapuram Forest Units at Gandarvakottai Region for the year 2017-2018. After receipt of the tenders, an auction was conducted on 18.01.2018 and the petitioner was the highest bidder for a sum of Rs.12,06,300/- and he has also remitted the said amount. But auction was not confirmed in his favour. Alleging that the first respondent is taking steps to confirm the auction in favour of the respondents 4 and 5, the petitioner has filed a writ petition in WP(MD)No.2661 of 2018 seeking a direction to the respondents 1 to 3 to conduct fresh public auction. This Court, by the order dated 13.02.2018, directed the respondent concerned to conduct fresh auction within a period of two weeks. Thereafter, fresh auction was conducted, in which, the fifth respondent herein was the highest bidder for a sum of Rs.65,05,000/- and he has remitted a sum of Rs.2,00,000/- as EMD. But, as per the tender condition, a person who has remitted Rs.2,00,000/- as EMD, he is entitled to offer bid to the maximum amount of Rs.10,00,000/- only. But the fifth respondent was allowed to offer bid amount more than the EMD limit. Apart from that, as per the tender condition, 100% of the total bid amount has to be paid immediately after the public auction. But till date, the fifth respondent has not remitted the entire bid amount. The respondents 1 to 3 permitted the fourth respondent to adjust the amount of Rs.14,00,000/- which was remitted by him in the earlier proceedings, which is not permissible under law. Since the fifth respondent failed to comply with all the tender conditions, the present writ petition has been filed, seeking direction to the first respondent to conduct fresh auction.

3. Earlier, this Court ordered notice to the respondents on 01.03.2018 and also granted an order of *status quo*. Thereafter, today, when the matter is taken up for hearing, the learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that as per the orders passed by this Court, re-auction was conducted on 15.02.2018. In that auction, the petitioner as well as fifth respondent have participated and the fifth respondent has offered a sum of Rs.65,05,000/- whereas, the petitioner has offered only Rs.65,00,000/-. In the above circumstances, the fifth respondent has been declared as the highest bidder. Thereafter, as per the tender conditions, the fifth respondent has deposited Rs.14,00,000/- on the very same day as EMD. Subsequently, he has paid Rs.59,00,000/- towards bid amount. Since this Court has granted an order of *status quo* on 01.03.2018, the first respondent was not in a position to receive the said amount from the fifth respondent. The learned Additional Government Pleader further submitted that



auction has been conducted as per the orders passed by this Court and both the petitioner and fifth respondent have participated in the auction and the fifth respondent, offered the highest amount and he has been declared as highest bidder and the petitioner has also accepted the same and also signed in the auction proceedings.

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4. The learned counsel appearing for the fifth respondent submitted that as per Clause-6(i) of the tender condition, the petitioner was granted seven days time to pay the amount thereafter within a period of 14 days, he should appear before the Regional Office along with receipt of payment and execute an agreement. As per Clause 6(ii) of the tender condition, in the event of default in paying the amount within seven days, the tenderer has to pay penalty at the rate of 25 paise for Rs.100/- within 8 to 14 days and he has to pay penalty of 50 paise for Rs.100/- for the next one week and if the amount has not been paid within 21 days, he has to pay penalty as per the order passed by the Regional Manager. The learned counsel further submitted that the fifth respondent has already deposited a sum of Rs.59,00,000/- and only in view of the order passed by this Court, the respondents 1 to 3 are not in a position to receive the amount and, even today, he is ready to pay the remaining amount.

5. I have heard the rival submissions made on either side and perused the entire records carefully.

6. The main contention of the petitioner is that this Court has passed an order on 13.02.2018 directing the respondents to conduct fresh auction and auction has been hurriedly conducted on 15.02.2018 and even though the petitioner has participated in the auction, he was prevented by the authorities to offer more amount. That apart, the fifth respondent has not paid the EMD as per the tender condition and he has also not paid the entire bid amount in time. The learned counsel further submitted that even now, the petitioner is willing to offer Rs.70,000/- as against the offer made by the fifth respondent.

7. On a perusal of the records it is seen that earlier, this Court has passed an order directing the concerned respondent to conduct fresh auction within a period of two weeks and as per the direction, re-auction was conducted on 15.02.2018, in which, the petitioner has also participated and offered Rs.65,00,000/-. But the fifth respondent has offered more than the offer made by the petitioner. Hence, the fifth respondent has been declared as highest bidder. According to the first respondent, the fifth respondent has paid a sum of Rs.14,00,000/- as EMD before participating in the auction, whereas, the petitioner has paid only Rs.9,00,000/-.

8. So far as the contention of the petitioner regarding non depositing of the auction amount by the fifth respondent as per Clause 6(ii) of the tender condition, no time limit is fixed for depositing the bid amount and the fifth respondent can pay the amount with penalty. Now that the fifth respondent had also paid



substantial amount and only in view of the interim order passed by this court, the remaining amount was not paid by him

9. The respondents 1 to 3 also submitted that they could not receive the amount of Rs.59,00,000/- from the fifth respondent, in view of the *status quo* order passed by this Court. Now, the learned counsel appearing for the fifth respondent submitted that the fifth respondent is now ready and willing to pay the entire bid amount.

10. The contention of the petitioner that he is ready and willing to pay Rs.70,00,000/- as bid amount, cannot be countenanced for the simple reason that he has already participated in the auction and offered only Rs.65,00,000/- and that after the auction, the petitioner cannot be permitted to make any further offer at this belated stage.

11. In the above circumstances, this writ petition is dismissed. No costs. Consequently, WMP(MD)No.4225 of 2018 is closed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1.The Managing Director,  
Tamil Nadu Forest Plantation  
Corporation Limited,  
Karur Road, Mallachipuram,  
Kambarasampettai, Tiruchirapalli - 622 101.

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3.The Regional Manager,  
Tamil Nadu Forest Plantation  
Corporation Limited,  
Indira Nagar, Machuvadi,  
Pudukottai & District - 622 004.

+1cc to Mr.K.Baalasundharan, Advocate, SR.No.55169

+1cc to Mr.M.Karunanidhi, Advocate, SR.No.55194

+1cc to The Special Government Pleader, SR.No.55655

mj

RL/7C/4P/SV/MMS/SAR2/2/5/2018